

1 Daniel C. Cotman (SBN 218315)
dan@cotmanip.com
2 Nelson E. Brestoff, *of counsel* (SBN 065291)
3 nick@cotmanip.com
COTMAN IP LAW GROUP, PLC
4 117 East Colorado Blvd, Suite 460
5 Pasadena, California 91105
6 (626) 405-1413/FAX: (626) 628-0404
Attorneys for Plaintiff
Cellular Accessories For Less, Inc.

8
9 Daniel C. Lapidus (Bar No. 227170)
dan@lapiduslaw.com
10 Lapidus & Lapidus
11 177 South Beverly Drive
Beverly Hills, CA 90212
12 Melanie J. Cogburn (Bar No.00796377 Texas)
mcogburn@mwrlegal.com
13 Moster Wynne & Ressler, P.C.
14 620 Congress Ave., Suite 320
15 Austin, TX 78701-3230
Attorney for Defendants
Trinitas, LLC and David Oakes

17
18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 Cellular Accessories For Less, Inc., a) Case No.: 2:12-cv-06736-DDP-SH
21 California corporation,)
22 Plaintiff,) STIPULATED PROTECTIVE ORDER
23)
24 vs.)
25 Trinitas LLC, a Texas limited liability)
26 company, and David Oakes, an)
27 individual, DOES 1 through 10,)
28 Defendants.)

1 To expedite the flow of discovery materials, to facilitate the prompt resolution
2 of disputes over confidentiality of discovery materials, to adequately protect
3 information, the parties are entitled to keep confidential, to ensure that only materials
4 the parties are entitled to keep confidential are subject to such treatment, and to
5 ensure the parties are permitted reasonably necessary uses of such materials in
6 preparation for and in the conduct of trial, pursuant to F.R.Civ.P. 26(c), the parties
7 hereby stipulate to and request the Court to enter the following Stipulated Protective
8 Order:

9 **A. INFORMATION SUBJECT TO THIS ORDER**

10 1. For purposes of this Order, "CONFIDENTIAL INFORMATION" shall
11 mean all information, items or material produced for or disclosed to a Receiving
12 Party that a Producing Party, including any party to this action and any non-party
13 producing information, items or material voluntarily or pursuant to a subpoena or a
14 court order, considers to constitute or to contain trade secrets and/or other
15 confidential technical, product, design, sales, marketing, customer, financial, or other
16 commercial information, whether embodied in physical objects, documents, or the
17 factual knowledge of persons, and which has been designated by the Producing Party.
18 Any CONFIDENTIAL INFORMATION obtained by any Receiving Party from any
19 Producing Party pursuant to discovery in this litigation may be used only for
20 purposes of preparation and litigation of this matter, i.e. for prosecuting, defending or
21 attempting to settle this litigation.
22

23 2. Any document or tangible thing containing or including any
24 CONFIDENTIAL INFORMATION may be designated as such by the Producing
25 Party by marking copies of such material "Confidential" prior to or at the time such
26 copies are furnished to the Receiving Party. The marking shall be accomplished by
27 affixing the legend "Confidential" to each page of the material being designated. If
28

1 only a portion of the material on a page qualifies for protection, the Producing Party
2 also must clearly identify the protected portion(s).

3 3. At the request of any party, the original and all copies of any deposition
4 transcript, in whole or in part, shall be marked "Confidential" by the reporter. Any
5 portions so designated shall thereafter be treated in accordance with the terms of this
6 Order.

7 4. All CONFIDENTIAL INFORMATION not reduced to documentary,
8 tangible or physical form or which cannot be conveniently designated, as set forth in
9 Section A. 2, shall be designated by the Producing Party by informing the Receiving
10 Party of the designation in writing (such as in the form of electronic mail). Any
11 documents and/or physical objects made available for inspection by counsel for the
12 Receiving Party prior to producing copies of selected items shall initially be
13 considered, as a whole, to constitute "HIGHLY CONFIDENTIAL-ATTORNEYS'
14 EYES ONLY" (as defined in Section D below) and shall be subject to this Order.
15 After the Receiving Party has identified the documents that it wants copied and
16 produced, the Producing Party shall have a reasonable time to review and designate
17 the appropriate documents as CONFIDENTIAL INFORMATION or HIGHLY
18 CONFIDENTIAL INFORMATION-ATTORNEYS' EYES ONLY prior to
19 furnishing copies to the Receiving Party.
20

21 5. The following information is not CONFIDENTIAL INFORMATION:

22 a. Any information which at the time of disclosure to a Receiving Party
23 is in the public domain;

24 b. Any information which subsequent to its disclosure to a Receiving
25 Party, becomes part of the public domain as a result the publication not involving a
26 violation of this Order;

27 c. Any information that the Receiving Party can show was directly
28 known to it prior to the disclosure; and

1 d. Any information that the Receiving Party can show, by written
2 records, was received by it after the disclosure from a source who obtained the
3 information lawfully and under no obligation of confidentiality to the Producing
4 Party.

5 **B. NO WAIVER OF PRIVILEGE**

6 Inspection or production of documents and/or physical objects shall not
7 constitute a waiver of the attorney-client privilege or work product immunity or any
8 other applicable privilege, trade secret protection and/or protection under this Order
9 as CONFIDENTIAL INFORMATION, or as HIGHLY CONFIDENTIAL
10 INFORMATION-ATTORNEYS' EYES ONLY if, as soon as reasonably practicable
11 after the Producing Party becomes aware of any inadvertent or unintentional
12 disclosure, the Producing Party designates any such documents and/or physical
13 objects as within the attorney-client privilege, work product immunity, or any other
14 applicable privilege or protection under this Order and request return of such
15 documents and/or physical objects to the Producing Party. Upon request by the
16 Producing Party, the Receiving Party immediately shall return or destroy all copies of
17 such inadvertently produced document(s) and/or physical objects. Notwithstanding
18 this provision, outside litigation counsel of record are not required to delete
19 information that may reside on their respective electronic back-up systems that are
20 over-written in the normal course of business. Nothing herein shall prevent the
21 Receiving Party from challenging the propriety of the attorney-client privilege, work
22 product immunity or other applicable privilege or trade secret or other protection
23 designation by submitting a written challenge to the Court.
24

25 **C. DISCOVERY RULES REMAIN UNCHANGED**

26 Nothing herein shall alter or change in any way that the discovery provisions
27 of the Federal Rules of Civil Procedure, the Local Rules for the United States District
28

1 Court for the Central District of California, or the Court's Docket Control Orders and
2 Discovery Orders.

3 **D. INFORMATION DESIGNATED HIGHLY CONFIDENTIAL**

4 **ATTORNEY'S EYES ONLY**

5 1. CONFIDENTIAL INFORMATION may be additionally designated
6 "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY." HIGHLY
7 CONFIDENTIAL-ATTORNEYS' EYES ONLY" shall mean all CONFIDENTIAL
8 INFORMATION that constitutes proprietary, financial, product, design or technical
9 data or commercially sensitive competitive information including, without limitation
10 CONFIDENTIAL INFORMATION obtained from a nonparty pursuant to a current
11 Nondisclosure Agreement ("NDA"), CONFIDENTIAL INFORMATION relating to
12 future products not yet commercially released, customer information, sales plans,
13 marketing plans, and strategic plans, the disclosure of which is likely to cause harm
14 to the competitive position of the Producing Party. Any document or tangible thing
15 containing or including any CONFIDENTIAL INFORMATION may be designated
16 HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY by the Producing Party
17 by marking copies of such material "Highly Confidential-Attorneys' Eyes Only" prior
18 to or at the time such copies are furnished to the Receiving Party. The marking shall
19 be accomplished by affixing the legend "Highly Confidential-Attorneys' Eyes Only"
20 to each page of the material being designated. If only a portion of the material on a
21 page qualifies for protection, the Producing Party also must clearly identify the
22 protected portion(s).
23

24 Documents and/or physical objects designated HIGHLY CONFIDENTIAL-
25 ATTORNEYS' EYES ONLY and information contained therein shall be available
26 only to:
27
28

1 (a) outside litigation counsel of record and supporting personnel
 2 employed by those attorneys as described in Section E. 1. Below (not including in-
 3 house counsel),

4 (b) technical advisors as described in Section E. 2 below and to have
 5 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

6 (c) the Court and its personnel;

7 (d) court reporters and their staff, professional jury or trial consultants,
 8 and Professional Vendors to whom disclosure is reasonably necessary for this
 9 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
 10 (Exhibit A); and

11 (e) the author or authorized recipient of a document containing the
 12 information or a custodian or other authorized person who otherwise pose asked for
 13 new the information.
 14

15 **E. PERSONS AUTHORIZED TO RECEIVE CONFIDENTIAL**
 16 **INFORMATION**

17 Subject to the limitations for HIGHLY CONFIDENTIAL- ATTORNEYS'
 18 EYES ONLY designations as described in the previous sections, the following
 19 categories of persons shall have access to documents and/or physical objects
 20 designated as Confidential:

21 1. Counsel. Counsel for a Receiving Party shall have access to the Producing
 22 Party's information designated CONFIDENTIAL. The term "counsel" shall mean
 23 attorneys for the Plaintiff, and the Defendant, working on this litigation, including
 24 both outside and in-house counsel, including supporting personnel employed by the
 25 attorneys, such as paralegals, legal translators, legal secretaries, law clerks and
 26 shorthand reporters, independent legal translators retained to translate in connection
 27 with this action, independent court reporters pertain to record and transcribe
 28 testimony in connection with this action, graphics or design services retained by

1 counsel for purposes of preparing demonstrative or other exhibits for deposition, trial,
2 or other court proceedings in the actions, and non-technical jury or trial consulting
3 services, including mock jurors, retained by counsel. Before any person other than
4 counsel or counsel's employees and in-office independent contractors providing
5 litigation support, may have access to the CONFIDENTIAL INFORMATION, such
6 person shall have signed the "Acknowledgment and Agreement to Be Bound"
7 (Exhibit A);

8 2. Technical Advisors. Information designated CONFIDENTIAL or HIGHLY
9 CONFIDENTIAL- ATTORNEYS' EYES ONLY of a Producing Party, and such
10 copies, as are reasonably necessary for maintaining, defending or evaluating this
11 litigation, may be furnished and disclosed to technical advisors. The term "technical
12 advisor" shall mean an outside consultant or consulting or testifying expert witness
13 with whom counsel may deem it necessary to consult concerning technical, financial,
14 or other aspects of this case for the preparation or trial thereof. Should a Receiving
15 Party find it necessary for maintaining, defending or even evaluating this litigation to
16 disclose a Producing Party's CONFIDENTIAL or HIGHLY CONFIDENTIAL-
17 ATTORNEYS' EYES ONLY Information to a technical advisor, no prior notice to
18 the Producing Party shall be required if (a) the technical advisor is not a current
19 owner, shareholder, member, manager, director, officer, employee or consultant
20 (other than as a technical advisor in this litigation) of an entity engaged in the
21 business of manufacturing, distributing or selling cellular phones and/or cellular
22 accessories, or anticipated to become one, and (b) the technical advisor shall have
23 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A). If a person
24 not meeting the criteria in (a) above is sought by the Receiving Party to be a technical
25 advisor, then the Receiving Party shall first give written or e-mail notice to the
26 Producing Party. Such written notice shall include the technical advisor's resume,
27 curriculum vitae or other information adequate to identify the individual's current
28

1 employer and employment history for the past five (5) years, including consulting
 2 relationships. The Producing Party may object to the disclosure of the information to
 3 such technical advisor by notifying the Receiving Party in writing or by e-mail of any
 4 objection within ten (10) days of receiving notice of the Receiving Party's request to
 5 disclose the CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
 6 ONLY information to such technical advisor. Thereafter, the Producing and
 7 Receiving Parties shall engage in a meet-and-confer process to address the issue. If
 8 the Receiving Party does not withdraw the name of the technical advisor, then the
 9 Producing Party may proceed by filing a motion showing good cause why the
 10 information or portions thereof shall not be disclosed to such persons. Any such
 11 motion shall be filed within 15 days after the Producing Party refuses to withdraw the
 12 name of the technical advisor. Except by further order of this Court, no
 13 CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
 14 information shall be disclosed to such technical advisor until the matter has been
 15 ruled upon by this Court or otherwise resolved. No disclosure of CONFIDENTIAL
 16 or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information shall be
 17 made to any technical advisor unless the person to whom the disclosure is to be made
 18 shall first have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
 19 A) stating that he or she has read and understands this Order and agrees to be bound
 20 by its terms. Identification of a technical advisor under this Protective Order is not a
 21 waiver of any applicable consultant or work product privilege, and does not by itself
 22 subject the technical advisor to any discovery.

24 **F. MANAGEMENT OF A PARTY**

25 Subject to the provisions below, CONFIDENTIAL INFORMATION of a
 26 Producing Party, and such copies as are reasonably necessary for maintaining,
 27 defending or evaluating this litigation, may be furnished and disclosed by counsel for
 28 a Receiving Party to a control group of no more than four (4) individuals who are

employees, managers, and/or supporting personnel of such Receiving Party with responsibility for maintaining, defending or evaluating this litigation. Should counsel for a Receiving Party find it necessary for maintaining, defending or evaluating this litigation to disclose a Producing Party's CONFIDENTIAL INFORMATION to a control group, counsel for the Receiving Party shall first obtain from such individual a signed "Acknowledgment and Agreement to The Bound" (Exhibit A) stating that he or she has read and understands this Order and agrees to be bound by its terms. Such written agreement shall be retained by counsel for the Receiving Party, but need not be disclosed to the Producing Party.

G. CHALLENGES TO CONFIDENTIALITY DESIGNATIONS

In the event that the Receiving Party contends that produced information has been improperly designated under this Order, the Receiving Party shall first request that the Producing Party modify its confidentiality designation. If the Producing Party declines to change its designation or fails to respond to the Receiving Party's written request within ten (10) days, the Receiving Party may file a motion in accordance with the requirements of L.R. 37 to have the Court modify the designation.

H. USE OF MATERIALS DESIGNATED UNDER THIS ORDER

1. CONFIDENTIAL and HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information shall be held in confidence by each person to whom it is disclosed, shall be used only for purposes of this litigation, should not be used for any business purpose, and shall not be disclosed to any person who is not entitled to receive such information as provided herein. All produced CONFIDENTIAL and HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information shall be carefully maintained so as to preclude access by persons who are not entitled to receive such information.

1 2. Except as may be otherwise ordered by the Court, any person may be
2 examined as a witness at deposition and trial and may testify concerning all
3 CONFIDENTIAL and HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
4 information of which such person had knowledge prior to any such designations.
5 Without in any way limiting the generality of the foregoing:

6 a. A present director, officer, and/or employee of a Producing Party
7 (who is designated to testify by the Producing Party and who is permitted to have
8 access to such information) may be examined and may testify concerning all
9 CONFIDENTIAL and HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
10 information which has been produced by that party;

11 b. A former director, officer, agent and/or employee of a Producing
12 Party may be examined and may testify concerning all CONFIDENTIAL and
13 HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information of which he
14 or she has authorized prior knowledge, including any CONFIDENTIAL and
15 HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information that refers to
16 matters of which the witness has authorized personal knowledge, which has been
17 produced by that party and which pertains to the period or periods of his or her
18 employment; and
19

20 c. Non-party witnesses may be examined or testify concerning any
21 document containing CONFIDENTIAL and HIGHLY CONFIDENTIAL-
22 ATTORNEYS' EYES ONLY information of a Producing Party which appears on its
23 face or from other documents or testimony to have been received from or
24 communicated to the non-party witness as a result of any contact or relationship with
25 the Producing Party or a representative of a Producing Party. Any person other than
26 the witness, his or her attorney(s), or any other person qualified to receive
27 CONFIDENTIAL and HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
28 information under this Order shall be excluded from the portion of the examination

1 concerning such information, unless the Producing Party consents to persons other
 2 than qualified recipients being present at the examination. If the witness is
 3 represented by an attorney who is not qualified under this Order to receive such
 4 information, and prior to or at the examination, the Producing Party shall request that
 5 the attorney provide a signed statement, in the form of Exhibit A hereto, that he or
 6 she will comply with the terms of this Order to maintain the confidentiality of
 7 **CONFIDENTIAL** and **HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY**
 8 information disclosed during the course of the examination. In the event that such
 9 attorney declines to sign such a signed statement prior to the examination, the parties,
 10 by their attorneys, shall jointly seek a protective order from the Court prohibiting the
 11 attorney from disclosing **CONFIDENTIAL** and **HIGHLY CONFIDENTIAL-**
 12 **ATTORNEYS' EYES ONLY** information.

13
 14 3. Any party seeking to file documents that have been designated confidential,
 15 or that contain material that has been so designated, must seek a stipulation or
 16 application to file under seal pursuant to Local Rule 79-5 and otherwise comply with
 17 all requirements of Local Rule 79-5.

18 4. Nothing in this Order shall prohibit the transmission or communication of
 19 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY**
 20 information between and among qualified recipients:

21 a. By hand delivery;
 22 b. In sealed envelopes; or
 23 c. By telephone, facsimile, e-mail or other electronic transmission
 24 system; or where, under the circumstances, there is no reasonable likelihood that the
 25 transmission will be intercepted or misused by any person who is not a qualified
 26 recipient.

27 5. **CONFIDENTIAL** and **HIGHLY CONFIDENTIAL-ATTORNEYS' EYES**
 28 **ONLY** information shall not be copied or otherwise produced by a Receiving Party,

1 except for transmission to qualified recipients, without the written permission of the
2 Producing Party, or, in the alternative, by further Order of the Court. Nothing herein
3 shall, however, restrict a qualified recipient from making working copies, abstracts,
4 digests and analyses of CONFIDENTIAL or HIGHLY CONFIDENTIAL-
5 ATTORNEYS' EYES ONLY information for use in connection with this litigation.
6 Such working copies, abstracts, digests and analyses shall be deemed
7 CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
8 information under the terms of this Order.

9 **I. NONPARTY USE OF THIS PROTECTIVE ORDER**

10 1. A nonparty producing information or material voluntarily or pursuant to a
11 subpoena or a court order may designate such material or information as
12 CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
13 information pursuant to the terms of this Stipulated Protective Order.
14

15 2. A nonparty's use of this Stipulated Protective Order to protect its
16 CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
17 information does not by itself entitle the nonparty to access to CONFIDENTIAL or
18 HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information produced by
19 any party in this case.

20 **J. MISCELLANEOUS PROVISIONS**

21 1. Any of the notice requirements herein may be waived, in whole or in part,
22 but only in writing signed by the attorney-in-charge for the party against whom such
23 waiver will be effective.

24 2. The inadvertent or unintentional production of documents or information
25 containing CONFIDENTIAL and/or HIGHLY CONFIDENTIAL-ATTORNEYS'
26 EYES ONLY information which are not so designated shall not be deemed a waiver
27 in whole or in part of a claim for confidential treatment.
28

1 3. Within sixty (60) days after the entry of a final non-appealable judgment or
2 order, or the complete settlement of all claims asserted against all parties in the
3 action, each party shall, at its option, either return to the Producing Party or destroy
4 all physical objects, and all documents marked CONFIDENTIAL or HIGHLY
5 CONFIDENTIAL-ATTORNEYS' EYES ONLY which were received from the
6 Producing Party, and shall destroy in whatever form stored or reproduced, all
7 physical objects, and documents, including but not limited to, correspondence,
8 memoranda, notes and other work product materials, which contain or refer to
9 CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY
10 information. Notwithstanding this provision, outside litigation counsel of record is
11 not required to delete information that may reside on their respective electronic
12 back-up systems that are over-written in the normal course of business.
13 Notwithstanding the foregoing, counsel shall be entitled to maintain copies of all
14 pleadings, motions and trial briefs (including all supporting and opposing papers and
15 exhibits thereto), written discovery requests and responses (and exhibits thereto),
16 deposition transcripts (and exhibits thereto), trial transcripts, and exhibits offered or
17 introduced into evidence in any hearing or trial.

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19 4. This Order is entered without prejudice to the right of any party to apply to
20 the Court at any time for additional protection, or to relax or rescind the restrictions
21 of this Order, when convenience or necessity requires it. No modification by the
22 parties shall have the force or effect of the Court order unless the Court approves the
23 modification.

24 ///

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27 5. Nothing in this Order, or actions taken under it, shall be construed as
28 waiving any legal right, claim or defense of the respective parties.

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3 DATED: March 21, 2013
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5

Respectfully submitted,
COTMAN IP LAW GROUP, PLC

6 By: _____
7 Daniel C. Cotman
8 Nelson E. Brestoff (*of counsel*)
9 Attorney for Plaintiffs
10 Cellular Accessories For Less, Inc.

11 DATED: March 21, 2013
12
13

LAPIDUS & LAPIDUS, PLC
MOSTER WYNNE & RESSLER, P.C.

14
15
16 By: _____
17 DANIEL C. LAPIDUS
18 MELANIE J. COGBURN
19 Attorney for Defendants
20 Trinitas, LLC and David Oakes
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ORDER

The foregoing Stipulated Protective Order is hereby approved and entered.

Dated March 21, 2013



Hon. Stephen J. Hillman
United States Magistrate Judge

Daniel C. Cotman (SBN 218315)
 dan@cotmanip.com
 Nelson E. Brestoff, *of counsel* (SBN 065291)
 nick@cotmanip.com
 COTMAN IP LAW GROUP, PLC
 117 East Colorado Blvd, Suite 460
 Pasadena, California 91105
 (626) 405-1413/FAX: (626) 628-0404
Attorneys for Plaintiff
Cellular Accessories For Less, Inc.

Daniel C. Lapidus (Bar No. 227170)
dan@lapiduslaw.com
 Lapidus & Lapidus
 177 South Beverly Drive
 Beverly Hills, CA 90212
 Melanie J. Cogburn (Bar No.00796377 Texas)
mcogburn@mwrlegal.com
 Moster Wynne & Ressler, P.C.
 620 Congress Ave., Suite 320
 Austin, TX 78701-3230
Attorney for Defendants
Trinitas, LLC and David Oakes

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

Cellular Accessories For Less, Inc., a)	Case No.: 2:12-cv-06736-DDP-SH
California corporation,)	
)	EXHIBIT A TO STIPULATED
Plaintiff,)	PROTECTIVE ORDER
)	
vs.)	
)	
Trinitas LLC, a Texas limited liability)	
company, and David Oakes, an)	
individual, DOES 1 through 10,)	
)	
Defendants.)	
)	

AGREEMENT TO BE BOUND BY
STIPULATED PROTECTIVE ORDER

I, _____, state:

1. I reside at _____.

2. My present employer is _____.

3. My present occupation or job description is _____.

4. I have read the Stipulated Protective Order dated _____ 2013, and have been engaged as _____ on behalf of _____ in the preparation and conduct of the subject litigation.

5. I am fully familiar with and agree to comply with and be bound by the provisions of said Order. I understand that I am to retain all copies of any documents and/or physical objects designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information in a secure manner, and that where upon the copies in any writings prepared by me containing any CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information are to be returned to counsel who provided me with such material.

6. I will not disclose confidentiality designated information to persons other than those specifically authorized by said Order, and will not copy or use except solely for the purpose of this action, any information obtained pursuant to said Order, except as provided in said Order. I also agree to notify any assistants, who are required to assist me, of the terms of said Order and I will direct these assistants to comply with the terms of said Order.

7. In accordance with Section E. 2 of the Protective Order (if applicable), I have attached my resume, curriculum vitae or other information to this executed

1 Confidentiality Agreement sufficient to identify my current employer and
2 employment history for the past five (5) years, including all consulting relationships.

3 I state under penalty of perjury under the laws of the United States of America
4 that the foregoing is true and correct.

5 Executed on this ____ day of _____ 2013.
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